

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Alabama Broadcasting Partners	)	BDSTA-20081014ADH
	)	BDSTA-20081015AAJ
Request for Early Transition and	)	BLSTA-20081103ADU
Phased Transition Relief	)	Facility ID: 701
For Station WAKA-DT	)	
Selma, AL	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 25, 2008**

**Released: November 26, 2008**

By the Commission: Commissioner Copps concurring and issuing a statement; Commissioner Adelstein issuing a statement.

## **I. INTRODUCTION**

1. Before the Commission for consideration are requests filed on October 14, 2008 and October 15, 2008, for special temporary authority (STA) for WAKA-DT, Selma, Alabama. Specifically, three types of relief are requested: (1) “early transition” authority to begin operating the station’s post-transition DTV facilities on channel 42 prior to the February 17, 2009 DTV transition date pursuant to the provisions set forth in the *Third Periodic DTV Review Report and Order*<sup>1</sup>; (2) authority to simultaneously operate the station’s pre-transition DTV facilities on channel 55 and post-transition DTV facilities on channel 42 for approximately one month until February 17, 2009 when operation on channel 55 must terminate; and (3) “phased transition” relief to permit the station to operate its post-transition DTV facilities on channel 42 at less than its full, authorized parameters pursuant to the provisions set forth in the *Third Periodic DTV Review Report and Order*.<sup>2</sup> For the reasons set forth below, we grant the requests for STA.

## **II. BACKGROUND**

2. WAKA-DT requests “early transition” authority to begin operating on its post-transition DTV channel 42 approximately one month before the DTV transition date of February 17, 2009 pursuant to the policy set forth in the *Third Periodic DTV Review Report and Order*.<sup>3</sup> WAKA-DT states that early operation on Channel 42 (in conjunction with continued operation on Channel 55) will facilitate cable and satellite carriage of the station by providing the Channel 42 signal in advance of the transition so that these carriers can make the necessary adjustments to their receive facilities to be able to receive the station’s post-transition channel. This step reduces the risk of interruptions in service after February 17, 2009. The Commission has stated that a station will be permitted to transition early if the following requirements are met: (1) the early transitioning station must not cause impermissible interference to another station; and (2) the early transitioning station must continue to serve its existing viewers for the

<sup>1</sup> 23 FCC Rcd 2994, ¶121 (2007)(*Third DTV Periodic Review Report and Order*).

<sup>2</sup> *Id.* at ¶¶94-96.

<sup>3</sup> *Id.* at ¶121.

remainder of the transition and commence its full, authorized post-transition operations on February 18, 2009.<sup>4</sup>

3. WAKA-DT also requests authority to simultaneously operate both its pre-transition DTV facilities on channel 55 and post-transition DTV facilities on channel 42 for approximately one month prior to the February 17, 2009 DTV transition date. The station states that it needs to continue operating both facilities in order to facilitate the conversion of equipment associated with its analog and pre-transition DTV facilities to its final, post-transition DTV facilities. The station intends to optimize over-the-air service before the transition using channel 55, as described above, while providing the digital signal to cable and satellite operators on channel 42. Operation of channel 42 in this manner prior to the transition will facilitate a smooth transition for cable and satellite subscribers and will avoid any break in service for them after February 17, when operation on channel 55 must cease.

4. Finally, WAKA-DT requests phased transition relief after the transition pursuant to the policy set forth in the *Third Periodic DTV Review Report and Order*,<sup>5</sup> WAKA-DT states that operation for a very brief period after February 17, 2009, at slightly reduced power is necessary because the station's transition requires conversion of transmitter equipment currently in use with its pre-transition digital operation on channel 55. This post-transition temporary reduction is permitted by the criteria established in the *Third Periodic DTV Review Report and Order*.<sup>6</sup> The alternative would be for the station to terminate operation of its pre-transition DTV facilities for a period of time while it completes the conversion. Because the station will have already terminated its analog operations on December 1, 2008,<sup>7</sup> it would not be able to provide any service, analog or digital, to its viewers if it is not permitted to operate the digital channels. If granted authority to operate both its pre- and post-transition facilities, the station will be able to maintain service to the majority of its viewers while it completes the equipment conversion.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at ¶¶94-96.

<sup>6</sup> In the *Third DTV Periodic Review Report and Order*, ¶¶94-96, the Commission stated that it would consider stations' requests for STA to operate their post-transition facilities on post-transition channels at less than their full, authorized facilities (as defined by the DTV Table Appendix B) provided that stations can demonstrate a "unique technical challenge" and they can serve at least 85 percent of the same population that receives their current analog TV and DTV service. The Commission defined "unique technical challenge" as the types of situations described in its 2007 decisions concerning DTV extensions and "use or lose" waivers. See *Extension of the Digital Television Construction Deadline*, 22 FCC Rcd 9789 (2007) and *Requests for Waiver of July 1, 2005 and July 1, 2006 "Use or Lose" Deadlines*, 22 FCC Rcd 9750 (2007). The Commission stated that stations facing a "unique technical challenge" include stations that have a side-mounted digital antenna and top-mounted analog antenna and will need to install a top-mounted antenna for post-transition digital use, but cannot do so before the end of the transition or face other circumstance in which the operation of a station's analog service prevents the completion of construction of the station's full, authorized post-transition facility. *Third DTV Periodic Review Report and Order* at ¶53. The Commission stated that other circumstances could include, but were not limited to, stations whose local power company cannot provide sufficient electrical capacity to the tower site to power both analog and full power digital operations, and stations that do not have space at their antenna site for both analog and digital equipment. *Id.*

<sup>7</sup> WAKA-DT has provided the required notification that it intends to terminate operation of its analog facilities on December 1, 2008, and stated that it would begin airing the required viewer notifications thirty-days before the planned termination. See File No. BLSTA-20081103ADU. The station states that early analog termination is required to allow for tower and antenna work, including removal of the existing top-mounted analog Channel 8 antenna and replacement with the new Channel 42 antenna.

### III. DISCUSSION

5. After a thorough review of the request for early transition, we conclude that the station should be permitted to begin early operation on its post-transition channel prior to the February 17, 2009 transition date even though not all of the criteria are fully met. In its STA request, WAKA-DT has demonstrated that the station will not cause impermissible interference to other stations.<sup>8</sup> However, as acknowledged, WAKA-DT will serve fewer than all of “its existing viewers for the remainder of the transition,” as required by the criteria in the *Third Periodic DTV Review Report and Order*. Specifically, 6% of existing viewers will lose service from WAKA for 34 days and 14% of existing viewers will lose service from WAKA for eight days,<sup>9</sup> during which time most of these viewers will have service from another CBS affiliate.<sup>10</sup> WAKA-TV explains that the reduction of the station’s pre-transition digital facilities on channel 55 to 86 percent is necessary in order that certain equipment from that operation can be transferred to the station’s post-transition digital operation on channel 42.

6. Although the two digital facilities would not serve all of the station’s existing viewers, as required by the criteria in the *Third Periodic DTV Review Report and Order*, we find that WAKA-DT has shown that early transition will serve the public interest by allowing the station to reconfigure its existing analog and pre-transition DTV equipment for use with its post-transition DTV facilities, thus ensuring a successful digital transition. Early transition will also permit the station, a CBS affiliate, to provide continuous service and disrupt as few viewers as possible during this interim period until the station’s full post-transition facilities can be completed. In reaching our conclusion that the public interest is served by a grant of the request for STA we note that most of the viewers who would temporarily lose over-the-air service from WAKA-DT will continue being served by another CBS affiliate. Also, we note that should we deny the STA, WAKA-DT’s other choice would be to completely terminate operation of its analog and pre-transition digital operations while it reconfigures its equipment, thus leaving its viewers without any service over-the-air or from cable or satellite. WAKA-DT estimates that the station could be dark for as long as a month.<sup>11</sup> We find that permitting WAKA-DT to go dark for this length of time would not serve the public interest. Therefore, given all these circumstances, we grant the request for STA to commence early post-transition operation pursuant to the WAKA-DT construction permit’s technical parameters, File No. BPCDT-20080414ACK. If problems do arise, we expect them to be solved expeditiously and failure to do so could result in the Commission requiring termination of the operation.

<sup>8</sup> See File Nos. BDSTA-20081014ADH and BDSTA-20081015AAJ.

<sup>9</sup> The STA request proposes that the station’s early transition DTV facilities on channel 42 will serve only 71 percent of the station’s current analog and pre-transition DTV viewers. However, as outlined more fully below, WAKA-DT seeks authority to continue to operate the station’s pre-transition digital facilities on channel 55 at reduced power and those facilities will continue to serve 94 percent of the station’s existing analog and digital viewers from January 4, 2009 to February 9, 2009, and then 86 percent from February 9, 2009 to the end of the DTV transition on February 17, 2009. See File Nos. BDSTA-20081014ADH and BDSTA-20081015AAJ.

<sup>10</sup> Five other CBS affiliates will continue to provide service to most of the viewers that would suffer the temporary loss of service if the Commission approves the STA requests: WIAT(TV), Birmingham, AL (Birmingham DMA); WRBL(TV), Columbus, GA (Opelika DMA); WTVY(TV), Dothan, AL (Dothan DMA,); WKRG-TV, Mobile, AL (Mobile-Pensacola DMA,); and WMDN(TV), Meridian, AL (Meridian DMA,). According to WAKA-DT, from January 4, 2009 to February 9, 2009, while WAKA-DT’s pre-transition digital facilities on channel 55 are operating with reduced power, only 1.8% of the population within WAKA(TV)’s analog contour will not receive CBS network programming from any over-the-air CBS affiliate. From February 9, 2009 to February 17, 2009, while WAKA-DT’s pre-transition digital facilities on channel 55 are operating with a further reduction in power, 3.4% of the population within WAKA(TV)’s analog contour will not receive CBS network programming from any over-the-air CBS affiliate. Finally, from February 18, 2009 to March 19, 2009, while WAKA-DT’s post transition digital facilities on channel 42 are operating with reduced power, 1.7% of the population within WAKA(TV)’s analog contour will not receive CBS network programming from any over-the-air CBS affiliate.

<sup>11</sup> See File Nos. BDSTA-20081014ADH and BDSTA-20081015AAJ.

7. We further find good cause to permit WAKA-DT to operate both its pre- and post-transition DTV channels for the limited period of time outlined in its request. Simultaneous operation of both DTV channels was not contemplated in the *Third DTV Periodic Review Report and Order*, but we find that such operation will help to facilitate WAKA-DT's conversion to digital and will avoid loss of network service. Accordingly, we conclude that the public interest will be served by also granting this STA request. We remind WAKA-DT that it must terminate operation on channel 55 before February 18, 2009.

8. Finally, we conclude that WAKA-DT should be permitted to operate its post-transition DTV facilities on its post-transition channel at less than its full, authorized facilities (as defined by the DTV Table Appendix B) beyond its current February 17, 2009 construction deadline. WAKA-TV has demonstrated that the station faces a "unique technical challenge" and that it will serve at least 94 percent of the same population that receives its current analog TV and DTV service. Furthermore, the STA facility will not cause impermissible interference, *i.e.*, more than 0.5 percent new interference, to other stations or prevent other stations from making their transition. Therefore, the public interest will also be served by grant of this STA request. Wherefore, the deadline by which WAKA-DT must complete construction of its full, authorized post-transition facilities is extended until March 19, 2009, the date the station represents that it will complete construction. Accordingly, we require WAKA-DT to be operating with its full, authorized post-transition facilities no later than March 19, 2009.

9. Viewer notification requirement: We remind WAKA-DT that pursuant to the policy adopted in the *Third DTV Periodic Review Report and Order*, it must comply with the following viewer notification requirements: The station must air viewer notifications on its analog facilities every day on-air at least four times a day including at least once in primetime for the 30-day period prior to the station's termination of its full, authorized analog service. These notifications must include: (1) the station's call sign and community of license; (2) the fact that the station must delay the construction and operation of its post-transition (DTV) service; (3) information about the nature, scope, and anticipated duration of the station's post-transition service limitations; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received; and whether viewers will need to repeat the channel scan on their DTV receivers; and (5) the street address, email address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to the notifications required for the station's planned analog termination and the DTV consumer education requirements adopted by the Commission in the *DTV Consumer Education Initiative*, 22 FCC Rcd 4134 (2008).

#### IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED that the requests for STA for WAKA-DT, Selma, Alabama (File No. BDSTA-20081014ADH, BDSTA-20081015AAJ and BLSTA-20081103ADU) ARE GRANTED as described above.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**CONCURRING STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

**Re:**    *In the Matter of Alabama Broadcasting Partners Request for Early Transition and Phased Transition Relief for Station WAKA-DT, Selma, AL.*

It is not clear to me that this is the optimal solution to the admittedly difficult transitional issues raised by WAKA. But neither the station nor the Bureau has identified a better option. Given that the transition is now less than 90 days away—and, indeed, WAKA has already begun providing viewer notification of the termination of its analog signal—I concur in the result as proposed.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

**Re:    *In the Matter of Alabama Broadcasting Partners Request for Early Transition and Phased Transition Relief for Station WAKA-DT, Selma, AL.***

I vote to approve this item, because it is important for us to send a clear message to broadcasters that the Commission and staff are poised to provide them with the necessary flexibility to upgrade their facilities to digital and serve their viewers. On February 17, 2009, there will be no excuses for broadcasters to remain unprepared to cease analog broadcast and operate solely in digital. Broadcasters should not leave any viewers out.

This item presents an unusual set of requests for authority to operate two digital channels for approximately one month, to begin early digital operations on WAKA's post-transition channel 42, and to operate at reduced power after the transition deadline. Based on the Media Bureau's recommendation, I support the grant of this temporary authority.

According to staff and the Alabama Broadcasting Partners, "six percent of existing viewers will lose service from WAKA for 34 days and 14% of existing viewers will lose service from WAKA for eight days, during which time most of these viewers will have service from another CBS affiliate." While this is unfortunate, the alternative – complete termination of WAKA's pre-transition DTV operation – is much worse. Providing service to the vast majority of WAKA's viewers is better than temporarily terminating service to all viewers. Moreover, this arrangement apparently does not cause impermissible interference to other stations.

For these reasons, I approve this item.